



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Avanco International, Inc.

File: B-241007.2

Date: March 13, 1991

Daniel B. Abrahams, Esq., Epstein, Becker & Green, for the protester.

John A. Dodds, Esq., Department of the Air Force, for the agency.

M. Penny Ahearn, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Selection of awardee on the basis of its overall technical superiority, notwithstanding its 5 percent higher price, is unobjectionable where solicitation made technical considerations more important than cost and agency reasonably concluded that technical superiority of awardee's proposal was worth the cost premium.

2. Claim for protest costs on basis that agency took action remedying alleged evaluation defect is denied, since award of protest costs is contingent upon issuance of decision on merits finding that agency violated a statute or regulation in the conduct of a procurement. General Accounting Office's (GAO) revised Bid Protest Regulations providing for award of protest costs in certain instances where contracting agency takes corrective action is inapplicable to protest filed before the effective date of the revised Regulations.

DECISION

Avanco International, Inc. protests the award of a contract to TechPlan Corporation, the incumbent contractor, under request for proposals (RFP) No. F49620-90-R-0002, issued by the Department of the Air Force for consultant services concerning the agency's International Research & Development Assessment Support Program. Avanco essentially contends that the agency failed to conduct a proper cost/technical tradeoff before making award based on the evaluated technical superiority of TechPlan's offer.

We deny the protest in part and dismiss it in part.

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The RFP provided for award of a 36-month, firm-fixed-price, time and materials contract. Award was to be made based on the proposal offering the best overall value and lowest risk, the assessment to be based on four evaluation factors: technical, management, schedule, and cost. The three non-cost factors, all of equal importance, were divided further into a total of seven areas to be evaluated. Cost was to be evaluated for completeness, reasonableness, and realism. Technical/management/schedule merit was more important than cost, and the government reserved the right to make award to other than the lowest offeror.

Of the 10 initially submitted proposals, three, including Avanco's, were determined to be in the competitive range. Following discussions, Avanco submitted two BAFOs, priced separately; the first reduced the price of its otherwise unchanged initial proposal, and the second, alternate BAFO reduced the price further than the first BAFO and changed the technical proposal by offering a substitute for one of the key personnel. Following evaluation of BAFOs, the technical ratings and evaluated prices were as follows:

<u>Offerer</u>	<u>Technical Score</u> ^{1/}	<u>Cost</u>
TechPlan	52.7 percent	\$1,862,086
Avanco Offer A	40.7 percent	\$1,880,245
Avanco Offer B	2/	\$1,725,106
Third offeror	40.1 percent	\$1,915,711

The source selection official approved the evaluation panel's recommendation of award to TechPlan as technically superior and offering the best overall value and, therefore, made award to that firm. The agency notified Avanco of the award and at the same time indicated that the protester's alternate proposal had not been considered due to the technical change made in it after technical discussions had concluded.

1/ Proposals were rated by five evaluators using a set of questions for each subfactor. Each question was scored with a maximum of three points. The average score for each subfactor was calculated and a color rating was assigned based on the range of the average score. Finally, the average percentage of possible points given to each offeror was determined.

2/ While no documentation exists on the technical evaluation of Avanco's alternate BAFO at this stage of the procurement, according to the agency, the evaluation panel in fact evaluated the firm's substitution of personnel and determined that it had no effect on the firm's scoring.

Avanco protested to our Office the denial of the firm's agency-level protest and the failure to consider the firm's alternate offer in the original source selection process. In its report on the protest, the Air Force responded that it erroneously had informed Avanco that the firm's alternate proposal had not been considered in the original source selection decision when in fact it was considered.^{3/} However, due to the lack of documentation for this evaluation, the contracting officer reconvened the evaluation panel for a post-protest reevaluation of Avanco's alternate BAFO. As a result of this reevaluation, both of the protester's proposals continued to be rated technically inferior to the awardee's. The technical ratings and evaluated prices following the reevaluation were as follows:

<u>Offeror</u>	<u>Technical Score</u>	<u>Cost</u>
TechPlan	52.7 percent	\$1,862,057
Avanco Offer A	40.7 percent	\$1,927,585
Avanco Offer B	41.6 percent	\$1,768,916 ^{4/}
Third Offeror	40.1 percent	\$1,994,113

Based on the reevaluation, the source selection authority determined that TechPlan offered a technically superior approach and provided the best overall value to the government, and concluded that the award to TechPlan was proper.

Avanco continues to protest the award decision, now on the basis that the action taken by the agency, i.e., the reevaluation, does not cure the original, allegedly deficient, evaluation. Specifically, the protester complains that in the reevaluation the source selection authority failed to make a

^{3/} The agency now reports that statements received from the contracting officer who conducted the original BAFO evaluation, as well as three of the evaluation panel members, have confirmed that Avanco's alternate proposal was in fact evaluated with the original BAFOs. According to the agency, the reason for the misinformation given to Avanco was that a new contracting officer who took responsibility for the procurement after the source selection decision was made believed that the firm's alternate offer had not been evaluated due to the lack of documentation on the evaluation.

^{4/} While no records exist of the original cost evaluation, the agency believes that the \$43,810 difference in evaluated cost of Avanco's alternate offer between the original BAFO and the post-protest reevaluation is due to a minor error in calculations. The agency has verified the calculations made under the reevaluation.

specific determination that the awardee's technical superiority warranted the cost premium as compared to the protester's alternate proposal.

Cost/technical tradeoffs may be made in selecting an awardee subject only to the test of rationality and consistency with the established evaluation factors. Maytag Aircraft Corp., B-237068.3, Apr. 26, 1990, 90-1 CPD ¶ 430. The Federal Acquisition Regulation, § 15.612(d)(2), requires that documentation supporting selection decisions show the relative differences among proposals; their strengths; weaknesses and risks; and the basis and reasons for the decision. Accordingly, we would be obligated to object to a tradeoff where a reasonable basis is not evident from the record. See generally TRW, Inc., 68 Comp. Gen. 511 (1989), 89-1 CPD ¶ 584; Amtec Corp., B-240647, Dec. 12, 1990, 90-2 CPD ¶ 482.

The cost/technical tradeoff here is supported by the record and it is reasonable. As indicated, under the RFP, technical evaluation factors (including management and schedule) were more important than cost. TechPlan's technical proposal was rated higher than Avanco's alternate offer in five of the seven areas under the three evaluation factors with a total score 11 percent higher than the protester's. (In the remaining two areas evaluated, the protester and awardee received equal ratings.) The written record of the briefing held with the source selection authority after the reevaluation, which was approved by the source selection authority, specifically notes Avanco's lower alternate BAFO cost compared to TechPlan's higher technical score, affirms the original determination that TechPlan's proposal represented the best overall value to the government, and includes a recommendation for award to TechPlan. Although the source selection authority's written determination based on the reevaluation did not refer to a cost/technical tradeoff per se, it is clear from this determination that he considered TechPlan's technical superiority worth the additional cost. The source selection document specifically notes that technical and cost factors were evaluated, that cost was of lesser importance, that TechPlan was evaluated technically superior, and that award to TechPlan offered the best overall value to the government.

We also have the benefit of a post-protest statement concerning the cost/technical tradeoff, submitted for the record by the source selection authority. In that statement, the selection authority gives his recollection that at the conclusion of the reevaluation he determined TechPlan offered the best overall value based on its proposal's superior evaluation in five of the seven evaluated areas, including top quality staff and quick reaction capabilities in rendering the services--areas he considered significant indicators of the

nature of performance to be expected--for only a five percent increase in cost, which was of lesser importance than technical considerations.

Accordingly, we conclude that the Air Force conducted a proper cost/technical tradeoff in that it reasonably determined that the awardee's technical superiority merited the additional cost associated with its proposal.^{5/}

Avanco also complains that the cost evaluation appears arbitrary because the higher evaluated cost of its alternate offer on the reevaluation, compared to the original BAFO evaluation, is not adequately explained by the agency (see discussion in footnote 4, above). The protester questions whether the \$43,810 discrepancy between the two evaluations resulted from different methods of cost analysis applied to its own and TechPlan's proposals. There is no evidence that the Air Force used different methods of cost analysis in evaluating Avanco's and the awardee's proposals or that the \$43,810 discrepancy resulted from other than a simple miscalculation, the explanation offered by the Air Force.

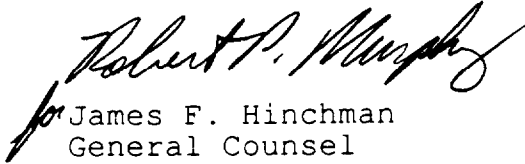
Finally, Avanco contends that, to the extent the Air Force's reevaluation constituted adequate corrective action for the original failure to evaluate Avanco's alternate BAFO, the firm is entitled to reimbursement of its protest costs as the prevailing party in bringing about the corrective action; Avanco cites in this regard the General Services Administration Board of Contract Appeals (GSBCA) standard for recovery of protest costs. Further, the protester urges us to apply the recently enacted changes to our Bid Protest Regulations allowing recovery of costs in certain instances when a contracting agency takes corrective action.

Under our current applicable Regulations, we may find a protester entitled to recover its protest costs where we determine that a solicitation, proposed award, or award does not comply with statutes or regulations. 4 C.F.R. § 21.6(d) (1990). We have made no such finding here; even if the initial evaluation was not conducted properly (a finding we

^{5/} The situation here is distinguishable from that in System Dev. Corp., B-213726, June 6, 1984, 84-1 CPD ¶ 605, a case cited by the protester. There the agency improperly made award without considering cost, and there was no apparent justification for paying \$4 million more for a proposal rated only slightly better than the protester's technically acceptable proposal. Here, the Air Force considered cost, and we have found that the agency properly determined that the 5 percent (*i.e.*, \$93,141) price difference between proposals was minimal, while the technical difference was significant.

need not make), since we have issued no decision sustaining the protest on the merits, Avanco is not entitled to reimbursement of its protest costs. See Service Ventures, Inc., 68 Comp. Gen. 642 (1989), 89-2 CPD ¶ 172. Although changes in our Regulations recently published in the Federal Register (see 56 Fed. Reg. 3759 (1991)) include a provision for the award of costs in certain cases where the contracting agency takes corrective action, this provision is inapplicable here, since Avanco's protest was filed before the rule's effective date, April 1, 1991.

The protest is denied in part and dismissed in part; the claim for protest costs is denied.


for James F. Hinchman
General Counsel